IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn.No. 402 of 1994

Date of decision: 17.10.2007

Raghbir Singh Petitioner

Versus

State of Haryana Respondent

Coram: Hon'ble Mr. Justice Harbans Lal

Present: Mr. Ajay Kansal, Advocate for the revisionist.
Mr.PS Sullar, Deputy Advocate General, Haryana

Harbans Lal, J.

This revision is directed against the judgment dated 5.2.1992 rendered by the Court of Shri Darshan Singh, Judicial Magistrate Ist Class, Hisar, whereby he convicted and sentenced the revision petitioner to undergo RI for a period of six months and to pay a fine of Rs.1,000/- or in default thereof to further undergo RI for a period one and half month, as well as judgment dated 8.7.1994 rendered by the learned Additional Sessions Judge, Hisar vide which the period of substantive sentence inflicted by the learned trial Court has been reduced from 6 months rigorous imprisonment to three months rigorous imprisonment maintaining the amount of fine of Rs.1000/- as well as its default clause.

As set up by the prosecution, the revisionist- Raghbir Singh is a bus conductor in the employment of Haryana Roadways and is posted in the Office of General Manager, Haryana Roadways, Hisar (hereinafter to be referred as " the G.M."). On 30.6.1990 he was entrusted with bus fare tickets of the value of Rs. 27584/- for being issued to the passengers. He did not deposit the tickets nor the sale proceeds thereof. Thereupon, the G.M. sent a letter Ex.PW3/A to S.H.O., Police Station City Hisar on

30.7.1990. On its basis, FIR Ex.PW5/A was recorded. The revisionist was placed under suspension vide order dated 12.9.1990. He put in his appearance before the G.M. on 12.11.1990 and explained his absence from 16.7.1990 to 13.11.1990. The latter sanctioned earned leave to the revisionist for the aforesaid period vide order dated 21.11.1990 (copy Ex.D2) and ordered his reinstatement w.e.f. 14.11.1990. He deposited a sum of Rs. 25052/- on 5.10.1990.

Mr. Ajay Kansal, Advocate appearing for the revisionist has strenuously urged that as emanates from the evidence produced in defence, the revisionist remained at rest from 1.7.1990 to 4.7.1990 and on leave from 5.7.1990 to 30.11.1990, which leave no scope for doubt that he never remained on duty after 30.6.1990 and as its consequence, there was no occasion for him to sell the tickets. He further puts that he deposited Rs.25402/- as well as the unsold tickets in the office of the G.M. on 5.10.1990 and in turn, the latter had written a letter for withdrawal of the case and in these premises, no criminal offence is made out against the revisionist.

He further submits that in view of the legal position laid down in re: **State of Punjab vs. Amarjit Singh,** 1992(1) Recent Criminal Reports, 619, the courts below have gravely erred in recording the conviction of the petitioner.

The next argument raised by the counsel appearing for the revisionist is that the prosecution has utterly failed to prove by leading any evidence on the file that the tickets issued to the revisionist on 30.6.1990

were sold by him and in the absence of the same, no criminal offence under Section 409 of the Indian Penal Code is made out. He further added to it that as transpires from the evidence trickled from the respective mouths of the prosecution witnesses, the revisionist was not on duty and was on rest/leave from 1.7.1990 till 13.11.1990 and these circumstances lead to the only inference that after 30.6.1990 he never remained on duty.

To tide over these submissions Mr. PS Sullar, Deputy Advocate General, Haryana has maintained that the said amount was deposited by the revisionist after registration of the case and as would be apparent from the evidence, revisionist got manipulated the sanction of his leave and thus, it would be going too far to say that the charged offence is not established against the revisionist.

I have given a deep and thoughtful consideration to the rival submissions. In **Amarjit Singh's case (supra)**, on 29.4.1982, Amarjit Singh, who was working as a Conductor in Pepsu Road Transport Corporation, (for short 'PRTC') absented himself from his duty with a sum of Rs.3254.55 of PRTC, Kapurthala. The case was got registered against him. The Division Bench of this Court was pleased to observe as under :

> *"After accepting the deposit of Rs. 2804/- from the respondent on August 17,1982, it does not lie in the mouth of Pepsu Road Transport Corporation to urge that the charge of criminal breach of trust against the accused in respect of allegedly misappropriated amount*

still subsists. Regarding failure of the accused to return the unsold tickets it has been held by the Supreme Court in Sardar Singh vs. State of Haryana, AIR 1977 Supreme Court 1766 that merely failure or omission to return property does not constitute an offence under Section 409 of the Indian Penal Code, Relevant observations read, what the section requires is something much more than mere failure or omission to return the receipt book, The prosecution has to go further and show that the appellant dishonestly misappropriated or converted the receipt book to his own use or dishonestly used or, disposed of it. That, we are afraid, the prosecution has not been able to do in the present case. We are, therefore, of the view that the appellant was wrongly convicted under Section 409. Finding of not guilty returned by the learned trial court is, therefore, affirmed."

To my mind, the case in hand is manifestly covered by **Amarjit Singh's case (supra)**. A glance through Ex.D1 would reveal that an amount of Rs. 25402/- was deposited by the revisionist on 5.10.1990 with the concerned authority of Haryana Roadways. As per Ex.D1/A the tickets box as well as the value of the sold tickets were deposited on the said date by the revisionist. As emerges out of Ex.D2, another order, earned leave was sanctioned for the period from 16.7.1990 to 13.11.1990 in favour of the

revisionist by the competent authority. As revealed by Ex.D4, he was on rest from 1.7.1990 to 4.7.1990 and on leave from 5.7.1990 to 15.7.1990. This official record is a clincher towards the fact that the revisionist remained on rest from 1.7.1990 to 4.7.1990 and thereafter he proceeded on earned leave which has been duly sanctioned by the competent authority. The prosecution has not adduced any cogent, convincing and clear evidence leading to the conclusion that right from 1.7.1990 onwards, he remained on duty and had sold the tickets of Bus fare. It is own evidence of the complainant in the form of above discussed documents that the revisionist was on rest/leave during the above mentioned period. If so, how he could be expected to have sold the tickets. It is probable that when the revisionist learnt about the registration of case against him, he on some advice deposited the amount of Rs.25402/- alongwith tickets to save his job. As already noticed, there is no evidence regarding sale of tickets by the revisionist. He could have sold the tickets only to the Bus passengers. The prosecution has not produced any evidence as to on which Bus he was a conductor when he sold tickets. The revisionist after registration of the case might had apprehended his suspension and arrest in the case. To get rid of the same he might have thought to return some tickets and cash in lieu of the other tickets.

In re: **Pushpa Kumar Rai v. State of Sikkim** 1978 Criminal Law Journal, 1379, their Lordships were pleased to observe that even if it is assumed that the accused had collected the amount, the offence did not fall under Section 409 of the Indian Penal Code which deals with breach of trust

by public servants and others. It was remarked as under:-

> *"In this case, therefore, even assuming that the accused was a conductor of the Bus of the Sikkim Nationalised Transport as alleged and in such capacity collected bus fares amounting to Rs. 2826.60p. as alleged or any other amount and failed to deposit the said amount, the accused can never be said to have been entrusted with that amount because the said amount was never 'made over' or 'transferred' or 'handed over', to the accused by anyone on behalf of the Sikkim Nationalised Transport. It also appears that in the charge itself the learned Sessions Judge did not state that the accused was entrusted with any amount but only stated that the accused was "entrusted with collecting the bus fares". I am afraid that being entrusted with the doing of a job is not the same thing as being entrusted with any property within the meaning of S. 405 and other congnate Sections of the I.P.C. even though some money or other property may come into the hand of the person in the course of his doing such job. That being so, I am of the opinion that there was absolutely no material on record to frame a charge under S.409 against the accused. And if the charge framed was such as could not be framed on the materials on record, a plea of guilty to such a charge*

is no plea in the eye of law and cannot be relied on by any Court, as the basis of any conviction. The learned Sessions Judge was, therefore, wrong in convicting the accused on the basis of his plea to the charge as framed by him and the order of conviction and sentence passed by him must, therefore, be set aside"

In re: **Sardar Singh v. State of Haryana** (1977) 1 Supreme Court Cases 463, their Lordships of the Hon'ble Supreme Court were pleased to observe as under:

"An essential ingredient of the offence under Section 405 is that the accused being in any manner entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own used that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied, which he has made touching the discharge of such trust.

Section 409 can be invoked only if it can be shown that the accused being in any manner entrusted with property or with dominion over property in his capacity as public servant committed criminal breach of trust in respect of that property. It requires something much more than mere failure or omission to return the property.

In the present case, the prosecution has not been able to show that the accused dishonestly misappropriated or converted the property to his own use or dishonestly used or disposed of it. Hence the conviction under Section 409 cannot stand."

Reverting back to the facts of the instant case, the prosecution has not inducted any evidence to the effect that the revisionist had dishonestly misappropriated or converted the tickets to his own use or disposed of the alleged entrusted property in violation of any direction of law. There being dearth of such evidence, the offence is not established in view of the observations recorded in re: Sardar Singh's case (supra).

In re: **Harbhajan Lal vs. State of Punjab,** 1984 (1) Recent Criminal Reports (Criminal) 567, the bus conductor had failed to return the unused tickets. The case under Section 409 of the Code was got registered against him. There was no evidence to the effect that the accused had sold the tickets and realized the amount. The Division Bench of this Court in these circumstances was pleased to hold that no case of misappropriation is made out unless there is a clear evidence that accused had realized the amount. Adverting to the facts of the current case, the defence evidence nullifies the prosecution case. Had the revisionist worked during the interregnum of 1.7.1990 to 13.11.1990, his rest/leave might had not been sanctioned. At the cost of repetition, it deserves to be pointed out here that, if he had worked on any Bus during the said period, the prosecution might had got proved the way bill of such Bus. Only then it

could have been inferred that he had the occasion to sell the tickets. Thus, the prosecution evidence falls short of proof regarding the sale of the tickets by the revisionist.

The approach of a Court to very lightly brush aside the defence witnesses cannot be approved. After all they are also the witnesses who appear in the Court to prove the defence and make the statements on oath. The burden to prove the defence is not as heavy on the defence as it is on the prosecution. the prosecution is required to esatblish its case beyond every shadow of doubt, but the accused is only required to show to the Court that the defence raised by him may not be fool proof, but is probable and plausible. If the Court is of the opinion that the defence appears to be reasonable and probable, then the Court is not entitled to reject the statements of the witnesses. (See **Janggu alias Shobhit and others v. State of Madhya Pradesh, 2000 Criminal Law Journal 711).**

Coming to the facts of the case in hand, the defence evidence, as noted supra, in the form of documents is probable, plausible and reasonable. Rather, the same knocks down the prosecution edifice. Thus, placing abundant reliance upon the same, it is held that the prosecution case collapses like a house of cards and sequelly, this revision succeeds and is accepted, setting aside the judgments of the Courts below and the revisionist-petitioner is hereby acquitted of the charge.

17th October, 2007 **(HARBANS LAL)**
gsv **JUDGE**